

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**United States,**

**Plaintiff(s),**

**v.**

**William J. Ferry,**

**Defendant(s).**

**CASE NO. SACR 08-0176 DOC**

**ORDER DENYING  
DEFENDANTS' MOTION TO  
UNSEAL GRAND JURY RECORDS  
AND TRANSCRIPTS**

Before the Court is Defendant William J. Ferry's ("Ferry" or "Defendant") Motion to Unseal and Disclosure of Grand Jury Records and Transcripts. After considering the moving, opposing and replying papers, as well as the parties' oral argument, and for the reasons that follow, the Court hereby DENIES Defendant's Motion.

**I. BACKGROUND**

Defendant Ferry has been charged with conspiracy; aiding and abetting mail fraud; and aiding and abetting wire fraud in conjunction with a high yield investment program. Defendants have brought a motion to unseal the grand jury records and transcripts for Defendant Ferry. The United States has made the records requested by Defendants available to the Court for *in camera*

1 review in deciding this motion. The Court has reviewed these documents.

## 2 **II. LEGAL STANDARD**

3 Generally grand jury proceedings are secret, including testimony that is supplied to grand  
4 jurors. However, several exceptions to that rule exist. Defendants bring their motion under the  
5 exception set forth in FEDERAL RULE OF CRIMINAL PROCEDURE 6(e)(3)(E)(ii) ("Rule 6(e)").  
6 Rule 6(e) states in relevant part:

7 The court may authorize disclosure--at a time, in a manner,  
8 and subject to any other conditions that it directs--of a grand-jury  
9 matter: (ii) at the request of a defendant who shows that a ground  
10 may exist to dismiss the indictment because of a matter that occurred  
11 before the grand jury.

12 Under *Pittsburgh Plate Glass Co. v. U.S.*, 360 U.S. 395 (1959), in order to warrant  
13 disclosure under this section, Defendants must demonstrate that a particularized need for  
14 disclosure of the grand jury materials exists that outweighs the policy of secrecy of grand jury  
15 proceedings.

## 16 **III. DISCUSSION**

17 Defendants argue they have met the standard set forth in *Pittsburgh Glass* because the  
18 testimony of witness Walter Norton demonstrates that a ground may exist for a dismissal of the  
19 indictment. Defendants argue that Ferry's indictment was first presented to a grand jury with the  
20 testimony of both Agent Norm Embry and witness Walter Norton, and the jury did not return a  
21 true bill. They argue that Ferry's indictment was then again presented to a new grand jury using  
22 only Norm Embry without the testimony of Walter Norton, and the jury then did return a true  
23 bill. The defense argues that these inconsistent presentations to the grand jury are the basis for  
24 an allegation of misconduct that could lead to a dismissal of the indictment.

25 The documents that the Court has reviewed *in camera* confirm the government's position  
26 that the indictment was only presented to a grand jury once in 2008, at which point the grand  
27 jury returned a true bill. The Court notes that the decision to offer Mr. Norton's testimony  
28 outside of the context of an indictment was made before, not after, his testimony. Therefore, the

1 Court cannot infer that the testimony of Mr. Norton—which was presented before the 2007 grand  
2 jury but not in the context of an indictment presentation—can form the basis for allegations of  
3 prosecutorial misconduct that would justify disclosure. Defendants have not met the required  
4 showing under *Pittsburgh Glass Company*.

5 Defendants alternatively argue that the government had an obligation to disclose Mr.  
6 Norton’s testimony to the 2008 grand jury that returned the true bill because it is exculpatory  
7 evidence. Defendants claim that the government is required to present all exculpatory evidence  
8 to grand juries under the Department of Justice’s policy that “when a prosecutor conducting a  
9 grand jury inquiry is personally aware of substantial evidence that directly negates the guilt of a  
10 subject of the investigation, the prosecutor must present or otherwise disclose such evidence to  
11 the grand jury.” Reply at 3. Even assuming the legal validity of this argument, the Court has  
12 reviewed Mr. Norton’s testimony and finds that the testimony is not exculpatory. Therefore, this  
13 theory also fall short of the showing required under *Pittsburgh Glass Company*.

14 Finally, Defendants argue that the grand jury testimony of Agent Embry should be  
15 disclosed because his involvement in the case is no longer secret. Reply at 2. Rule 6(e) provides  
16 for disclosure “only where a ground may exist to dismiss the indictment because of a matter that  
17 occurred before the grand jury.” Defendants’ argument does not fit into the rubric of Rule  
18 6(e)(3)(E)(ii) nor any of the other Rule 6(e)(3)(E) exceptions. Moreover, Defendant fails to  
19 offer a persuasive reason why the general policy of grand jury secrecy should be overridden  
20 simply because a witness’s involvement in the case is now known.

#### 21 **IV. OUTCOME**

22 For the reasons stated above, Defendant’s Motion is DENIED.

23  
24 IT IS SO ORDERED.

25 DATED: November 2, 2009

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28 DAVID O. CARTER  
United States District Judge